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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

# Implementation of the Cable Television Consumer Protection and Competition Act of 1992

## Broadcast Signal Carriage Issues

MM Docket  
No. 92-259

REPLY OF TIME WARNER ENTERTAINMENT COMPANY, L.P.,  
TO OPPOSITIONS TO PETITIONS FOR  
RECONSIDERATION OR CLARIFICATION

June 17, 1993

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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Implementation of the Cable	)	
Television Consumer Protection	)	
and Competition Act of 1992	)	MM Docket
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TO OPPOSITIONS TO PETITIONS FOR  
RECONSIDERATION OR CLARIFICATION

Preliminary Statement

On March 29, 1993, the Commission released a Report and Order in MM Docket No. 92-259 promulgating rules implementing and interpreting the must-carry and retransmission-consent provisions of §§ 4, 5 and 6 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. §§ 325(b), 534 and 535. Twenty-one parties in this rulemaking filed petitions for reconsideration. Various parties (including Time Warner Entertainment Company, L.P. ("TWE")), have filed oppositions. TWE herein replies to certain of those oppositions.

### Argument

- I. CABLE OPERATORS SHOULD BE PERMITTED TO OFFER COMMERCIAL SUBSCRIBERS ONLY THOSE SIGNALS THAT THEY WISH TO RECEIVE.

In response to petitions for reconsideration asking the Commission to make clear that cable operators are free to offer commercial subscribers (e.g., hospitals and hotels) a channel line-up without must-carry stations that such subscribers do not wish to receive, the National Association of Broadcasters ("the NAB") expresses a moving concern that such commercial subscribers may not be sophisticated enough to make a considered decision what stations they wish to receive. NAB Opp. 9. Besides, the NAB argues, even if commercial institutions were sophisticated enough, the suggested exception would deprive the viewers who actually watch televisions provided by commercial subscribers of access to must-carry stations. NAB Opp. 9-10.

The NAB closes its eyes to reality. Especially with respect to commercial subscribers, cable operators face stiff competition from alternative-technology multichannel video programming distributors such as SMATV operators. And, commercial subscribers often insist upon a channel line-up that is custom tailored to their special needs and wishes. Thus, to be competitive, cable operators must be

able to offer commercial subscribers a channel line-up that is comparable to that offered by competitors.

Without the suggested exception, cable operators would arrive at the starting line with a handicap because the must-carry rules are applicable to cable operators but not to their competitors. And, whenever a cable operator loses a commercial subscriber to a noncable competitor, viewers who actually watch television sets provided by that subscriber certainly lose access to must-carry stations. If that is to be the outcome anyway, it seems much preferable at least to foster competition by permitting cable operators to offer commercial subscribers only those signals that they wish to receive.

## II. RETRANSMISSION-CONSENT ELECTORS SHOULD LOSE THEIR NETWORK-NONDUPE RIGHTS.

In response to requests for reconsideration of the rule that retransmission-consent electors retain their "black-out" rights (even if they are not carried on a cable system), Capital Cities/ABC, Inc. ("ABC"), argues that a rule that would make retransmission-consent electors lose such rights "would force the local station to elect must carry -- or run the risk that the cable system would import a distant affiliate into the local area". ABC Opp. 3.

Apparently, ABC has never heard of competition--or, if it has, it is not taken with the idea. What ABC wants is a rule that permits it, on the one hand, to extract retransmission-consent payments without the tempering influence of pesky competitors, and, on the other hand, to retaliate against a cable system that balks at its demands by depriving the system's viewers of all network programming. Of course, the result of the absence of competition would be higher retransmission-consent payments, which will eventually be borne by the consumer.

Conclusion

For the foregoing reasons, the arguments made in the Oppositions to which TWE replies herein should be rejected.

June 17, 1993

Respectfully submitted,

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# **CERTIFICATE OF SERVICE**

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